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Individual or Collective Action? A Problem for Professional Engineers

Action individuelle ou collective? Une importante question pour les ingénieurs professionnels

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Résumé de l'article

Depuis longtemps les ingénieurs sont conscients du fossé qui sépare leurs intérêts de ceux de leurs employeurs et de communauté d'intérêts qui les lient entre eux. Bien qu'il soit généralement admis qu'une action collective est nécessaire, le problème est de se mettre d'accord sur le type d'action collective qu'il s'agit d'entreprendre.

L'Association des ingénieurs professionnels de l'Ontario (APEO) rejette l'idée de la négociation collective selon la loi, car il lui semble que cette institutionnalisation serait nuisible au statut et rôle social de l'ingénieur. C'est pourquoi elle favorise des négociations sur une base « volontaire » : ce qui affaiblit évidemment la position des ingénieurs dans la négociation puisqu'aucune base légale n'existe et que finalement tout dépend du bon vouloir de la direction.

Une opposition va donc se développer au sein de l'APEO d'abord puis à l'extérieur : Le Comité pour l'avancement des ingénieurs professionnels (CAPE) a été mis sur pied vers 1960. Son but est d'institutionnaliser l'action collective en intégrant les ingénieurs en tant qu'une entité séparée dans le *Labour Relations Act*. Après l'échec de cette tentative il va se dissoudre en 1964. La controverse ne s'arrête pas pour autant. Bien au contraire de nombreux groupuscules se forment et s'agitent plus ou moins anarchiquement.

Le résultat de cette pression fut le changement d'attitude de l'APEO vers 1967. Si elle se refuse toujours à institutionnaliser les négociations sous la forme de conventions collectives elle admet l'importance d'une action collective mais cette dernière se situant sur une base « volontaire ».

L'exemple de la Société des ingénieurs professionnels et assimilés de l'Hydro Ontario (SOHPEA) est très illustratif de cette lutte. Convaincue de la nécessité de conventions collectives, elle essaya, d'une part, de convaincre l'APEO du bien fondé de cette politique et aussi de lui forcer la main en présentant un projet d'amendement au *Labour Relations Act* allant dans ce sens. Très dynamique la SOHPEA prit une part active dans la formation de deux comités dont nous reparlerons plus loin. Pendant ce temps elle continua de défendre les droits des ingénieurs de l'Hydro Ontario et expérimentait les limitations inhérentes à la formule des « négociations volontaires ». Finalement, en novembre 1970 elle devait obtenir gain de cause puisque le gouvernement provincial amendait la loi qui reconnaissait la SOHPEA comme le représentant officiel des ingénieurs dans les négociations avec la direction. Ce dénouement aura une grande influence sur les autres organisations et sur l'APEO elle-même.

Le Comité spécial des ingénieurs professionnels (SCOPE) formé début 1969, va lui aussi jouer un rôle important dans la lutte à côté de la SOHPEA. Devant le refus de l'APEO d'admettre le principe de la convention collective, le SCOPE essaie de mettre sur pied un organisme chargé de cette tâche mais qui serait associé à l'APEO afin de préserver l'unité du mouvement. Lorsqu'en novembre 1970 le gouvernement provincial modifie le *Labour Relations Act* dans le sens souhaité par le SCOPE et la SOHPEA, un nouvel organisme — la FESA — est mise en place à côté de l'APEO afin de fournir les structures nécessaires aux négociations collectives.

Pendant ce même temps le Comité pour le droit de négociation des cadres pose les problèmes de la représentativité. Il aborde aussi d'autres questions, telles que la nature et l'action d'éventuels médiateurs, les critères d'appartenance aux syndicats.

Maintenant que le droit à la convention collective leur a été accordé que vont faire les ingénieurs ? Il semble que l'on se dirige vers l'établissement d'un organisme spécialement chargé de ce genre de problèmes — du type FESA — qui agirait en collaboration avec l'APEO. Il restera ensuite à trouver les structures qui permettront les négociations les plus efficaces. Beaucoup de flexibilité sera nécessaire tant les situations à l'intérieur de chaque entreprise ou de chaque industrie sont différentes, complexes et changeantes.

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Individual or Collective Action?

A Problem for Professional Engineers

Fraser Isbester

Sandra Castle

In this article, the authors describe the different tendencies found in Ontario among Professional Engineers towards collective action. Should their negotiations with their employers be based on law or only on voluntary recognition ?

Ontario's professional engineers have long recognized that the functional and attitudinal differences between employers and employees tends to create a community of interest among employee-engineers, and this, in turn, has engendered arguments favouring collective action. The question is ; what sort of collective action ? Those who have supported negotiations based on law, alike with those who have supported negotiations based on voluntary recognition from management, are unwilling to give credence to the inevitability of conflict and confrontation. This professional intra-organizational hostility, emerging as it does from a dispute over means, not ends, is probably not irreconcilable.

The position of the Association of Professional Engineers of Ontario (APEO) has been that the retention of the professional status of engineers and the preservation of concern for the public interest demand that employee-management negotiations be undertaken voluntarily in an atmosphere of mutual acceptance and respect. APEO splinter groups, with a variety of titles which obscure the common cord of membership have emphasized that foundation in law is required for meaningful negotiations. The problem is one of balancing the relative cost of potential loss of which will determine the future status, strength, and degree of consolidation of the profession in the province.

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The Ontario contingent of the engineering profession is beset by the same problems in extent and kind as have already been encountered in the United Kingdom, the United States and elsewhere in Canada, especially Quebec. Benefiting from the experience of others, the Ontario group can experiment with a somewhat broader range of options. Whether Ontario engineers will capitalize on the experience of their colleagues in other regions and will withstand the stress of conflict are questions which will determine the future status, strength, and degree of consolidation of the profession in the province.

GROWTH OF CONFLICT

In 1899, a bill to incorporate the Canadian Society of Civil Engineers was withdrawn in the face of opposition from the mining community. No positive action was taken to establish a recognized professional group until the passage, in 1922, of Bill 67, the Professional Engineers Act which created the Association of Professional Engineers of Ontario (APEO). This body in 1937 received the legislative right to become a self-regulating entity¹.

Under the provisions of P. C. 1003, the temporary federal war-time legislation, the APEO in 1943 with a membership of approximately 2700, assisted in the formation of the Federation of Employee Professional Engineers and Assistants. Of the seventeen units organized for collective bargaining purposes in the Federation only eight actually became certified. Among this latter group was the Ontario Hydro unit which achieved certification in 1947². The legislative protection lapsed in 1948, at which time provincial legislation was enacted. The Engineering Institute of Canada with the support of the councils of the various provincial associations, assumed, without referendum or membership vote, the role of professional representative in relationships with management. In spite of opposition from the Federation, the APEO was successful in exerting influence to obtain the exclusion of professional engineers from the Ontario Labor Relations Act. The bargaining status of the former units now suffered from lack of foundation in law and from dependency on voluntary recognition from management. Gone was legal recourse in case of dispute. Gone was managerial obligation to compromise. And quickly disappearing was the strength provided by solidarity.

¹ Legislature of Ontario, *Debates*, No. 127, May 26, 1969, p. 4799.

² L. C. SENTANCE, « Current 'Collective Bargaining' Practices in the World of the Professions », *Collective Bargaining and the Professional Employee*, Toronto, Centre for Industrial Relations, 1966.

Fragmentation was not deterred by the Liaison Committee established within the APEO in 1948 to achieve the integration of the Federation and the larger Association. The contentious issue, still unresolved, was the APEO's refusal to countenance the institution of formal procedures for collective bargaining. Eventually, in 1955, the Federation disbanded on the understanding that some means would be found and instituted to provide the employee-engineer with an effective voice in salary discussions. In an attempt to fulfill this obligation, the APEO formed, as a standing body, the Employee Members Committee (EMC) composed of members of the company groups. Under the coordination of the EMC, each former bargaining unit was able to negotiate with the management of its company.

The tenuous thread of hope for the improvement of the employee-engineer's bargaining position was snapped when, in 1960, the EMC recommendation for voluntary member participation in collective bargaining under law was rejected by the APEO Council³.

During this time, company groups and sub-groups of the Association made representations to both the APEO and the Ontario Legislature to obtain amendments to the Labor Relations Act, or to the Professional Engineers Act to provide professional engineers, as a separate bargaining unit, with the right to negotiate and sign agreements with employer organizations. On the assumption that the EMC, being under the control of the APEO, was an ineffective mechanism for the introduction of reforms, a splinter group of the Association formed the Committee for the Advancement of Professional Engineers (CAPE). This group, charging the APEO with lack of concern for the objectives of its membership which now numbered 18,000,⁴ adopted as its aim the creation of mechanisms within the APEO for the employee-engineer to obtain effective action on matters of professional authority, status, and remuneration. CAPE intended to solicit the opinions of members to determine appropriate APEO policy and organization, and to gain membership approval for necessary institutional reforms. Unsuccessful in obtaining representation on Council for the presentation of the employee-engineer's viewpoint, CAPE disbanded in 1964 to reappear later under a new organizational title.

3 Society of Ontario Hydro Professional Engineers, « Short History on Attempts to Gain Bargaining Rights Under Law for Professional Engineers », *Society Guide*.

4 C. WATSON and J. BUTORAC, *Qualified Manpower in Ontario: 1961-1966*, Toronto, 1968, p. 87.

From this genesis, the controversy has gradually increased in intensity and pervaded the entire profession. Various reform groups with a confusion of labels have emerged to engage the problem on different fronts, but whatever the professed grounds for dissension, collective bargaining is the fundamental issue. The policy which the APEO consistently maintained was expressed in a resolution of Council passed in 1961 :

« This Council reaffirms its considered opinion that it is in contradiction to individual professional responsibility and to the professional concept of cooperation effort for professional engineers to engage in compulsory bargaining under law. Further, this Council is not prepared therefore, to provide any encouragement or support to movements of its members seeking to bring about collective bargaining under law »⁵.

The APEO's opposition to *compulsory* bargaining should not be interpreted as opposition to every form of bargaining. In 1964, the APEO, stressing the necessity for an active policy aimed at the improvement of employee-management relationships, requested each Chapter to form an Employment Practices Committee with broad membership participation to investigate the concept of professional collective bargaining and report Chapter opinion to the APEO⁶. In formulating this request, the APEO Council expressed its preference for retention of individual responsibility in employee-management relations, but recognized the contemporary requirement for the strength provided by collective action.

As a result of this study, the APEO Council in 1967 approved the distribution to members and employers of a booklet « Voluntary Group Negotiations » which was intended as a guide for professional bargaining groups. However, the EMC withdrew its support from the publication due to the fear that it would be detrimental to efforts to obtain general legislation which would provide all professional groups with bargaining rights⁷.

Throughout the ensuing conflict, the APEO adhered to the position that although it would support voluntary negotiating relationships through the provision of information and advice, it would not become involved directly in negotiations, nor function as a bargaining agent.

⁵ *Society Guide*, *op. cit.*

⁶ « News », *Professional Engineer and Engineering Digest*, December, 1964, p. 22.

⁷ « News », *Professional Engineer and Engineering Digest*, October, 1967.

In delineating the alternative courses of action available to engineers for the achievement of collective objectives, an explanation of the origins and location of the major change agents will clarify the channels through which efforts for innovation currently flow.

SOCIETY OF ONTARIO HYDRO PROFESSIONAL ENGINEERS AND ASSOCIATES

The Society's somewhat tumultuous history began in 1944 when it was formed as the Hydro-Electric Power Commission Unit No. 1, under P. C. 1003. After achieving certification, the Unit undertook collective bargaining activity under law for the benefit of its members until the withdrawal of the federal legislation in 1948. During the ensuing eight years, the Unit continued to bargain with the Hydro Commission on a voluntary basis, and in 1956 after the dissolution of the Federation, adopted the name Society of Ontario Hydro Professional Engineers and Associates (SOHPEA). From its inception, SOHPEA was a dominant force in the campaign to acquire rights for voluntary collective bargaining for professional engineers. In 1958, in spite of the opposition of the APEO Council, the Society presented a brief to the Ontario Legislature's Select Committee on Labor Relations to obtain an amendment to this end to the Labor Relations Act. SOHPEA's second similar submission to the Government elicited the response that the problem should be resolved within the profession.

Adopting the tactic suggested by this recommendation, the Society then derided its efforts to gaining APEO support for amendment of the Labor Relations Act, or of the Professional Engineers Act. Once again, the APEO maintained its position on the matter although the EMC supported the latter alternative. Undeterred by this opposition, the Society turned its attention to the promotion of co-operation among the major Ontario professional associations for the joint submission of a request for the creation of a general Professional Employees Act. In 1964, the EMC endorsed this position. In the space of the following years, SOHPEA, consistent with its earlier action in initiating CAPE, lent continued direct and indirect support to the enactment of a Professional Negotiations Act and was instrumental in the formation of the Special Committee of Professional Engineers (SCOPE) and the Steering Committee on Negotiation Rights for Professional Staffs, organizations generated by the perceived inflexibility and lack of responsiveness of the APEO government.

Difficulties in another quarter also occupied the attention of SOHPEA's members and brought efforts to improve the engineer's position

within the Hydro system. The 1958 cancellation of SOHPEA's contract was followed by strained relations and the breakdown of negotiations in the following year. Heeding the necessity for a more formalized procedure and basis for negotiations, the management of Ontario Hydro and SOHPEA in 1961 signed a Letter of Understanding in which the Society was recognized as the representative of the Commission's non-managerial engineering staff in all negotiations on economic matters and other questions of general application. The negotiating mechanism is the Joint Society-Management Committee composed of an equal number of representatives from each party. In the event that this body cannot reach agreement on any issue, the matter may be referred at the request of either party to a meeting of the General Manager of the company and the President of SOHPEA. If a satisfactory settlement is not reached at this stage, the issue, with mutual agreement, is submitted either to a Board of Mediation consisting of the General Manager, SOHPEA's President, and a third member selected as Chairman, or to the Commission for arbitration.

As the basis for a contractual relationship, the Letter of Understanding has relegated the Society to a position of weakness in negotiations. When it was necessary in 1968 and 1969 to refer salary disputes to the Commission for resolution, the opinion of the Hydro management was upheld on both occasions. In consideration of salary matters, it must be recognized that the Hydro-Electric Commission, as a self-sustaining public enterprise has a public responsibility to maintain operational costs at a reasonable level.

In order to effect a more satisfactory procedural agreement, the Society in March of 1968 requested that the Letter be replaced by a Recognition and Master Agreement, the major feature of which is the introduction of the concept of forced-choice arbitration. This system of settlement requires both parties to submit to an impartial arbitrator their final offers. The arbitrator then assesses the rationale for each position and decides totally in favor of one party. Forced-choice arbitration is claimed to be a means of avoiding the disadvantages of compromise solutions and encouraging the disputants to accept the responsibility for the formulation of reasonable demands. The Society contends that in the absence of recourse to the strike weapon, third party arbitration must be compulsory. This requirement is accentuated by the Commission's position as a public utility subject to political pressure for the minimization of costs.

SOHPEA gathers further support for its argument for the institution of impartial arbitration from the contention that the Commission has consistently favored management in its decisions, and from the precedent established by the Commission's use of binding arbitration procedures in its 1969 dispute with the non-professional Ontario Hydro Employees' Union.

After additional representations from SOHPEA, management in May, 1969 initiated exploratory discussions of the proposed Recognition and Master Agreement at meetings of the Joint Society-Management Committee. When this Committee reached a deadlock on the issue of whether disputes should be submitted for mediation or arbitration, the Society in March, 1970 transmitted its brief to the Commission for discussion.

In response to the brief, the Hydro Commission stated that dispute settlement by means of mediation and binding arbitration would be acceptable if the negotiating unit excluded supervisory personnel. Alternatively, the Commission would agree to a continuation of the present arrangement and the present unit composition if disputes were referred to a mutually acceptable external advisor for review and nonbinding recommendation. SOHPEA then proposed that a labor consultant be jointly appointed to assist in the determination of the most appropriate mechanism for negotiation and dispute resolution in the professional sector of the Ontario-Hydro organization.

At that time, SOHPEA decided to delay further action until the provincial government reached a decision on enactment of provincial legislation to provide engineers with legally based rights to organization and negotiation. This decision was made in November, 1970 with the passage of an amendment to the Ontario Labour Relations Act to bring professional engineers under the provisions of the Act⁸.

With the official proclamation of the amendments, SOHPEA will acquire the right to seek certification as the bargaining agent for professional engineers employed by the Hydro Commission and to replace its Letter of Understanding with a collective agreement founded on the Labour Act. In preference to this course of action, the Society may wish to continue to negotiate under a voluntary recognition relationship newly strengthened by the amended law. Whichever route is chosen, SOHPEA

⁸ Bill 167, *An Act to Amend the Labour Relations Act*, Ottawa, Queen's Printer, 1970.

will be required to deal with the question of unit determination in relation to the hierarchical level of inclusion and the professional exclusiveness of the unit.

The impact on the Society, the Commission and the APEO of the new legislation will be closely observed and assessed by professional engineers in other organizations and by members of other professions.

SPECIAL COMMITTEE OF PROFESSIONAL ENGINEERS

The roots of the Special Committee of Professional Engineers are firmly entrenched in the conflict which has surrounded the introduction to the Ontario Legislature of bills to revise the Professional Engineers Act of 1922. Subsequent to the failure of Bill 36 in 1960, the APEO concentrated on the drafting of another revision which was submitted to the Legislature in 1968 as Bill 42. With the publication of the Report of the Royal Commission Inquiry into Civil Rights (McRuer Report), Bill 42 was withdrawn for amendment in accordance with the recommendations of this Report. The McRuer Report, with reference to the 22 Ontario professions which have the statutory right for licensing and self-government, pointed out that the powers were granted by law as a means of protecting the public interest, not as a tool for the advancement of professional status. To reduce the risk that the self-governing rights might be used in a manner detrimental to the public interest, the Report suggested that the governing Council of each profession include some representation from the lay public. An alternative, and an anathema to the professions, would be state regulation of admission and discipline.

Within the engineering profession, controversy has arisen from recommendation three of the Report which states :

« The power of self-government should not be extended beyond the present limitations unless it is clearly established that the public interest demands it, and that the public interest could not be adequately safeguarded by other means »⁹.

On the basis of this recommendation, SOHPEA suggested the inclusion in the proposed Professional Engineers Act of an additional clause which would preclude the APEO from engaging in collective bargaining activities, or from influencing individuals or member groups to refrain

⁹ *Royal Commission Inquiry into Civil Rights*, Report No. 1, Vol. 3, 1968, Section 4, pp. 1159-1255.

from such action. A clause of this nature would provide a foundation for the creation of a separate body for the pursuit of matters related to the self-interest of the profession. In expressing its opposition to the proposed restriction, the APEO stated that, although it has in the past given some support to voluntary group action, the governing Council has, since its inception, opposed compulsory collective bargaining. To consolidate its position, the APEO contended that the majority of the membership was opposed to the formation of two discrete functional groups and added that the division of function was not a specific recommendation of the McRuer Report, and was in fact inconsistent with the general philosophy of the Report.

In late 1968, the proposed Professional Engineers Act, revised to conform to the precise recommendations of the Royal Commission, was re-submitted to the Legislature and received first reading as Bill 48. An additional objects clause was not included. The Bill gave the APEO the right to pass by-laws for its internal administration, to determine the criteria for admission and licensing of professional engineers, to prescribe a code of ethics, to engage in educational activities, and to establish disciplinary procedures. SOHPEA continued to support the need for a division of functions on the basis that the major part of the APEO's efforts are directed to welfare activities. It was also maintained that the APEO's attempts to block the establishment of collective bargaining emphasized the need for a body which would be responsive to the wishes of the membership.

Early in 1969, at a meeting with the representatives of several provincial engineering groups and the APEO Council, the Attorney General of Ontario suggested that the controversy over Bill 48 should be resolved within the profession. He also assured the parties that the Bill would not receive second reading until the opposing groups had had an opportunity to discuss their points of disagreement. Following this meeting, an Ad Hoc Working Committee of Professional Engineers, composed of representatives from engineering groups at Canadian General Electric, Northern Electric, Bell Telephone, the Ontario Civil Service and Ontario Hydro, was formed to discuss the proposed legislation with the APEO Council. In its first brief to the Council, the Working Committee requested immediate circulation of Bill 48 to the APEO membership and the holding of a referendum prior to the second reading of the Bill in the Legislature. The brief, citing the recommendation of the McRuer Report, suggested that the APEO be confined to welfare activities and that membership

be voluntary. This latter stipulation was made as a means of protecting the civil rights of the professional who does not wish to participate in welfare functions and therefore should not be required to lend financial support to this aspect of membership. The brief also requested support for legislation to establish a Council of Professional Engineers which would assume responsibility for licensing and professional regulation. The Working Committee drew upon the precedents of the legal and medical professions to support the position that the public interest could better be served by the suggested structure. The Employee Members' Committee (EMC) endorsed the brief and recommended that the APEO Council request the Government to delay Bill 48 until a referendum could be held.

Shortly after the presentation of the brief, the Working Committee, now known as the Special Committee of Professional Engineers (SCOPE), directly petitioned the Attorney General to delay second reading of the Bill and to request the recalcitrant APEO Council to hold a referendum. At this point, having determined that the majority of professional engineers favored the continuance of the APEO as the licensing body, SCOPE suggested that rather than creating two distinct bodies, the APEO be restructured into two Councils. One would hold authority under law to license members, the other, to be governed by a wholly-elected group, would be a voluntary service organization.

In the spring of 1969, at a general meeting of the APEO called at the request of SCOPE, the principle of a division of functions was endorsed ; a referendum was urged ; and Council was formally directed to request the delay of Bill 48 pending the results of the vote. In spite of further efforts by SCOPE, Bill 48 received third reading and became law in August, 1969. Defeat in this quarter stimulated SCOPE to marshal its forces in an effort to contest every seat in the imminent Council elections. This action was adopted in preference to the establishment of a service organization completely separate from the APEO since it was thought that effective change could better be initiated by working through the existing structure. It was also deemed unwise to aggravate the present schism by the creation of competitive professional organizations.

SCOPE's campaign was based on promotion of a division of functions to preclude the APEO Council from involvement in matters related to the employee-employer relationship. The extent of the fragmentation was position of the APEO Council and that of SCOPE. Subsequent to the evident in the near equal division of support in the election for the

election, SCOPE stressed that the need for internal cohesion was emphasized by indications that the Provincial Department of Labor might introduce legislation to remove the professional exclusion clause from the Labor Relations Act. SCOPE assumed the position that, for the protection of the status of all professions, concerted action is required to ensure that trade-unionism is not forced upon any profession. It pointed out that the unacceptable trade-union tactic of the strike weapon, the closed-shop concept, and the customary labor-management hostility may be forestalled by official and united support for the introduction of a Professional Negotiations Act and the establishment of a Professional Council of Ontario for the coordination of inter-professional efforts. Specifically to resolve problems in the engineering area, SCOPE advanced a proposal for the formation of an associate body of the APEO to deal with problems encountered by employee engineers.

The APEO Council agreed in April, 1970 to devote resources to the development of an associate body and gave support to the formulation of general legislation providing for collective negotiations for professionals. Council did not endorse, however, the resolution for the creation of a Professional Council of Ontario.

At the same time, the APEO Council agreed to co-operate with the Provincial Government in creating legislation for the provision of voluntary collective bargaining for professional engineers on the conditions that the homogeneity of the bargaining unit is protected and that engineers have freedom of choice in the matter of membership in a unit and in the selection of a bargaining agent ¹⁰.

In the fall of 1970, when it became evident that the Ontario Government would introduce an amendment to remove professional engineers from the exclusion clause of the Labour Relations Act, SCOPE developed a proposal for the formation of a new service organization to be known as the Federation of Engineers, Scientists and Associates (FESA). SCOPE held that a body of this type, to consist of engineers, scientific personnel, and highly qualified technological workers is necessary to provide a negotiating structure external to the trade union system for professional engineers since the division of functions within the APEO had not yet been effected ¹¹. SCOPE has stressed that the new organiza-

¹⁰ «The Profession Today and Tomorrow», *Professional Engineer and Engineering Digest*, April, 1970, XVI.

tion is essential to ensure the homogeneity of bargaining groups by providing an alternative to affiliation or integration with existing trade union units. In addition to the primary objectives of safeguarding the economic and social interests of its membership and establishing standards for working conditions, FESA would function as a liaison with governments and the public and would provide for the distribution of information on professional publications and research. FESA would also serve as a pressure group to persuade the Ontario Government to revise the provisions of the Labour Act to allow opportunity for elective forced-choice arbitration.

To preserve the unity of the engineering profession, SCOPE has expressed a preference for the creation of FESA with the co-operation of the APEO. To this end, the matter is to be presented to the APEO membership as part of SCOPE's platform during the 1970 APEO Council election campaign.

STEERING COMMITTEE ON NEGOTIATION RIGHTS FOR PROFESSIONAL STAFFS

During the period of conflict within SOHPEA and within the APEO, another group was laboring to gain support for the introduction of legislation to allow permissive collective bargaining for all professional groups. In 1964, the Steering Committee on Negotiation Rights for Professional Staffs presented to the major Ontario professional associations a brief proposing the establishment of a Professional Negotiations Act which would enable groups of employee-professionals to receive under law recognition for negotiations with employers.

Under this Act, membership in a professional staff group would be limited to individuals defined, on the basis of work performed rather than on the basis of holding a license, to be professionals. Circumstances and the nature of the particular organization would determine whether each profession should constitute a separate bargaining unit or whether a single unit could be multi-professional. These staff groups would be restricted from affiliation with trade unions or employer groups.

¹¹ *Preliminary Report and Recommendations for the Formation of A Federation of Engineers, Scientists and Associates*, Special Committee of Ontario Professional Engineers, October, 1970.

In recognition of the professional characteristic of individuality, the brief proposed that professionals who did not become members of the unit would not be bound by the terms of the agreement. As a device to protect the flexibility of those covered by the contract, each member, in addition to accepting the stipulations of common applicability, would have an individual contract with the employer to accommodate individual differences.

The proposed Act would provide for the appointment of an impartial mediator in situations where the employer and the staff group are unable to reach an agreement. In the event that the mediator cannot effect a settlement, either party would have the right to refer the matter for binding arbitration ¹².

Various professional groups expressed interest in further joint study of the problems common to professional employment and the development of possible solutions through collective action. Although the main principles of the brief produced a favorable reaction, some minor disagreement occurred on the composition of the bargaining unit and the determination of membership eligibility. Proceeding on the encouraging response, the Steering Committee in 1966 presented a draft Professional Negotiations Act to the Premier of Ontario. Among those groups supporting the brief were the Institute of Professional Librarians, the Committee for the Advancement of Professional Nurses, the Association of Professional Administrative Staff (Toronto Board of Education), and nine groups of professional engineers ¹³.

The submission contended that, although the professional sector of the labor force has expanded significantly in recent years, formal mechanisms to provide this important segment with an effective voice in the determination of its working conditions have been conspicuously absent. In analysis of the alternatives to the introduction of comprehensive legislation, stress was placed on the conflicts of interest which could arise if professionals were included in the employee definition of the Labor Relations Act. Such a provision could place professional supervisors and their non-professional subordinates in the same union. The brief reiterated

¹² Steering Committee on Negotiation for Professional Staffs, *Negotiation Rights for Professional Staffs*, November, 1964.

¹³ Steering Committee on Negotiation Rights for Professional Staffs, *Brief in Support of Legislation Entitled Professional Negotiations Act (1966)*, April, 1966.

the inappropriateness of the involvement of licensing bodies in collective negotiations. The third alternative, that of enacting separate legislation for each profession, was dismissed as being unwarranted and wasteful when a general act could more easily achieve the same purpose and also have the advantage of promoting a closer relationship among professional interests.

Following the submission of the brief, little direct promotion of this legislation occurred until March of 1970 when it was reported that the Ontario Minister of Labor was contemplating legislation to remove the exclusion clause from the Labor Relations Act. At this time, SCOPE, the APEO Council and the members of the Steering Committee resumed efforts to persuade the Government to consider the institution of a Professional Negotiations Act. In the fall of 1970, the Chemical Profession of Ontario added its support to the draft Act.

SCOPE also expressed its support for the establishment of a Professional Council of Ontario to replace the relatively weak Interprofessional Liaison Committee of Ontario. This Council's objectives were to include the encouragement of a mechanism to enable professions to make common submissions to Government commissions and councils ; the advancement of interprofessional communication to reduce duplication of effort ; the creation of a means for public expression of the professional viewpoint on social problems ; and the maintenance of professional standards and ethics.

As a result of the changes to the Labour Relations Act, professional engineers, the most vocal and numerous support for a professional act, have an effective channel for the furtherance of their position. Until a strong organization has been established for engineering and scientific personnel, the Steering Committee has suspended its pressure for the introduction of a labour act for professionals.

STATE OF FLUX

Further developments in the late spring of 1970 complicated the conundrum and left the interested groups in doubt as to the most effective course of action to achieve the economic and public service objectives of professional engineers. Indications that the Ontario Government, rather than tabling the Professional Negotiations Act, would initiate action to remove professional engineers from among those groups excluded from collective bargaining under the Labour Relations Act proved reliable. The

legislation, rather than following the precedent of the Quebec Labour Code in requiring engineers to form exclusive units for bargaining purposes, allows engineers to be included in a unit with other employees if a majority of the group of engineers prefer a mixed unit.

What does the enactment of the Labour Act amendments forecast for professional engineers? SCOPE and the APEO have several alternatives, some of which present a renewed opportunity for co-operation, to satisfy their joint and separate interests. In the light of the McRuer Report, the most unlikely option is the acquiescence of the APEO to the former demand to assume collective negotiation functions. Or the APEO, Council with its existing commitment to the development of an associate body for employee-engineers, may decide to adopt a policy of influencing management through persuasion and the dissemination of salary data. In this action, the APEO may attempt to enlist the support of all its constituent elements, or may accept the existence of competing organizations as inevitable.

A third course of action, that of the establishment of a separate organization such as FESA for collective bargaining under the Labour Relations Act, could be undertaken by SCOPE with or without the co-operation of the APEO Council. Licensing, regulatory, and educational functions would be retained by the APEO. To consolidate its position, SCOPE could renew its petition to the Government for an amendment to the Professional Engineers Act to specifically preclude the APEO from becoming involved in negotiation activities.

A final alternative is suggested by the press release of April, 1970 which announced the creation, as a self-governing constituent of the Engineering Institute of Canada, of the Canadian Society for Mechanical Engineering (CSME). This Society, with membership open to mechanical engineers, mechanical engineer technologists, and students of mechanical engineering, has initially outlined its functions as the promotion of professional knowledge, the protection of high standards, the increase of the profession's contribution to the Canadian economy, and the research, study and development of the nation's natural resources¹⁴. In addition, the CSME has noted that benefit services, professional status and recognition, and salary negotiations are areas which warrant attention. The

¹⁴ Canadian Society of Mechanical Engineers, *News Release*, April 11, 1970.

draft constitution of the CSME permits the Society to co-operate with any association or corporation of professional engineers established by a Provincial Act or with any society of engineers in order to further the mutual interests of the CSME and these groups. This provision will allow the CSME to support the work of the APEO as well as the functions of any separate organization formed for bargaining. If the establishment of FESA does not receive broad support, societies similar to the CSME may be created for each of the traditional engineering specializations. While other objectives of these societies may be pursued through national or provincial action, activity in professional negotiations could become fragmented among various disciplinary groups. This procedure would be unsatisfactory for a company facing negotiations with several engineering bodies and, in the absence of a unified position, for the engineers themselves. A more viable approach entails the establishment of inter-disciplinary bargaining units.

RESOLUTION

Having gained the designed legislated right to collective negotiations, the professional engineers of Ontario now have an obligation to examine the options in the context of the historical conditions and the paths which have been chosen by the engineers in other districts, and select the direction and structure which has the greatest possibility of success. To satisfy the requirements for protection of the public interest, restoral and maintenance of internal harmony, attainment of effective economic influence, and maintenance of professional standards, the establishment with APEO support of a separate organization for collective economic action is the most promising alternative, and the most likely one according to a reading of the visible change in outlook among members of the APEO Council.

At this juncture, it is immaterial whether the Council's volte-face stems from expediency and the need for self-maintenance, or from a genuine change in philosophy and perception. Of importance is the fact that the Council, with the exception of a small opposition voice, recognizes that professional unity requires response to general membership demands. In combination, permissive legislation and an officially recognized negotiating body would provide the degree of co-operation necessary to caulk the rifts which have been so apparent within the profession.

Action individuelle ou collective

Une importante question pour les ingénieurs professionnels

Depuis longtemps les ingénieurs sont conscients du fossé qui sépare leurs intérêts de ceux de leurs employeurs et de communauté d'intérêts qui les lient entre eux. Bien qu'il soit généralement admis qu'une action collective est nécessaire, le problème est de se mettre d'accord sur le type d'action collective qu'il s'agit d'entreprendre.

L'Association des ingénieurs professionnels de l'Ontario (APEO) rejette l'idée de la négociation collective selon la loi, car il lui semble que cette institutionnalisation serait nuisible au statut et rôle social de l'ingénieur. C'est pourquoi elle favorise des négociations sur une base « volontaire » : ce qui affaiblit évidemment la position des ingénieurs dans la négociation puisqu'aucune base légale n'existe et que finalement tout dépend du bon vouloir de la direction.

Une opposition va donc se développer au sein de l'APEO d'abord puis à l'extérieur : Le Comité pour l'avancement des ingénieurs professionnels (CAPE) a été mis sur pied vers 1960. Son but est d'institutionnaliser l'action collective en intégrant les ingénieurs en tant qu'une entité séparée dans le *Labour Relations Act*. Après l'échec de cette tentative il va se dissoudre en 1964. La controverse ne s'arrête pas pour autant. Bien au contraire de nombreux groupuscules se forment et s'agitent plus ou moins anarchiquement.

Le résultat de cette pression fut le changement d'attitude de l'APEO vers 1967. Si elle se refuse toujours à institutionnaliser les négociations sous la forme de conventions collectives elle admet l'importance d'une action collective mais cette dernière se situant sur une base « volontaire ».

L'exemple de la Société des ingénieurs professionnels et assimilés de l'Hydro Ontario (SOHPEA) est très illustratif de cette lutte. Convaincue de la nécessité de conventions collectives, elle essaya, d'une part, de convaincre l'APEO du bien fondé de cette politique et aussi de lui forcer la main en présentant un projet d'amendement au *Labour Relations Act* allant dans ce sens. Très dynamique la SOHPEA prit une part active dans la formation de deux comités dont nous reparlerons plus loin. Pendant ce temps elle continua de défendre les droits des ingénieurs de l'Hydro Ontario et expérimentait les limitations inhérentes à la formule des « négociations volontaires ». Finalement, en novembre 1970 elle devait obtenir gain de cause puisque le gouvernement provincial amendait la loi qui reconnaissait la SOHPEA comme le représentant officiel des ingénieurs dans les négociations avec la direction. Ce dénouement aura une grande influence sur les autres organisations et sur l'APEO elle-même.

Le Comité spécial des ingénieurs professionnels (SCOPE) formé début 1969, va lui aussi jouer un rôle important dans la lutte à côté de la SOHPEA. Devant le refus de l'APEO d'admettre le principe de la convention collective, le SCOPE essaie de mettre sur pied un organisme chargé de cette tâche mais qui serait associé à l'APEO afin de préserver l'unité du mouvement. Lorsqu'en novem-

bre 1970 le gouvernement provincial modifie le *Labour Relations Act* dans le sens souhaité par le SCOPE et la SOHPEA, un nouvel organisme — la FESA — est mise en place à côté de l'APEO afin de fournir les structures nécessaires aux négociations collectives.

Pendant ce même temps le Comité pour le droit de négociation des cadres pose les problèmes de la représentativité. Il aborde aussi d'autres questions, telles que la nature et l'action d'éventuels médiateurs, les critères d'appartenance aux syndicats.

Maintenant que le droit à la convention collective leur a été accordé que vont faire les ingénieurs? Il semble que l'on se dirige vers l'établissement d'un organisme spécialement chargé de ce genre de problèmes — du type FESA — qui agirait en collaboration avec l'APEO. Il restera ensuite à trouver les structures qui permettront les négociations les plus efficaces. Beaucoup de flexibilité sera nécessaire tant les situations à l'intérieur de chaque entreprise ou de chaque industrie sont différentes, complexes et changeantes.

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